

Regular Session, 2010

HOUSE BILL NO. 1133

BY REPRESENTATIVES ARNOLD AND BALDONE

PROPERTY/IMMOVABLE: Prohibits private transfer fee obligations

1 AN ACT

2 To enact Chapter 4-A of Code Title VII of Code Book III of Title 9 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 9:3131 through 3136, relative to private
4 transfer fee obligations; to provide for legislative intent; to provide for definitions;
5 to prohibit private transfer fee obligations; to provide for liability for violations; to
6 provide for disclosure of a private transfer fee; to provide for notice requirements for
7 existing private transfer fees; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 4-A of Code Title VII of Code Book III of Title 9 of the
10 Louisiana Revised Statutes of 1950, comprised of R.S. 9:3131 through 3136, is hereby
11 enacted to read as follows:

12 CHAPTER 4-A. CORPOREAL IMMOVABLES

13 §3131. Legislative intent

14 The legislature finds and declares that the public policy of this state favors
15 the marketability of corporeal immovables and the transferability of interests in
16 corporeal immovables free of title defects or unreasonable restraints on alienation.
17 The legislature further finds and declares that private transfer fee obligations violate
18 this public policy by impairing the marketability and transferability of corporeal
19 immovables and by constituting an unreasonable restraint on alienation regardless
20 of the duration of the obligation to pay a private transfer fee, the amount of a private

1 transfer fee, or the method by which any private transfer fee is created or imposed.

2 Thus, the legislature finds and declares that a private transfer fee obligation shall not

3 run with the title to a corporeal immovable or otherwise bind subsequent owners of

4 a corporeal immovable.

5 §3132. Definitions

6 As used in this Chapter:

7 (1) "Private transfer fee" means a fee or charge required by a private transfer
8 fee obligation and payable upon the transfer of an interest in a corporeal immovable,
9 or payable for the right to make or accept such transfer, regardless of whether the fee
10 or charge is a fixed amount or is determined as a percentage of the value of the
11 corporeal immovable, the purchase price, or other consideration given for the
12 transfer. "Private transfer fee" shall not include the following:

13 (a) Any consideration payable by the buyer to the seller for the interest in the
14 corporeal immovable being transferred, including any subsequent additional
15 consideration for the corporeal immovable payable by the buyer based upon any
16 subsequent appreciation, development, or sale of the corporeal immovable, provided
17 such additional consideration is payable on a one-time basis only and the obligation
18 to make such payment does not bind successors in title to the corporeal immovable.

19 (b) Any commission payable to a licensed real estate broker for the transfer
20 of a corporeal immovable pursuant to an agreement between the broker and the seller
21 or the buyer, including any subsequent additional commission for that transfer
22 payable by the seller or the buyer based upon any subsequent appreciation,
23 development, or sale of the corporeal immovable.

24 (c) Any interest, charges, fees, or other amounts payable by a borrower to
25 a lender pursuant to a loan secured by a mortgage against a corporeal immovable,
26 including but not limited to any fee payable to the lender for consenting to an
27 assumption of the loan or a transfer of the corporeal immovable subject to the
28 mortgage, any fees or charges payable to the lender for estoppel letters or

1 certificates, and any shared appreciation interest or profit participation or other
2 consideration and payable to the lender in connection with the loan.

3 (d) Any rent, reimbursement, charge, fee, or other amount payable by a
4 lessee to a lessor under a lease, including but not limited to any fee payable to the
5 lessor for consenting to an assignment, subletting, encumbrance, or transfer of the
6 lease.

7 (e) Any consideration payable to the holder of an option to purchase an
8 interest in a corporeal immovable or the holder of a right of first refusal or first offer
9 to purchase an interest in a corporeal immovable for waiving, releasing, or not
10 exercising the option or right upon the transfer of the corporeal immovable to
11 another person.

12 (f) Any tax, fee, charge, assessment, fine, or other amount payable to or
13 imposed by a governmental authority.

14 (g) Any fee, charge, assessment, fine, or other amount payable to an
15 association of unit owners established or recognized under the Louisiana
16 Condominium Act, R.S. 9:1121.101 et seq.; a timeshare association under the
17 Louisiana Timesharing Act, R.S. 9:1131.1 et seq.; or a homeowners association
18 established or recognized under the Louisiana Homeowners Association Act, R.S.
19 9:1141.1 et seq.; pursuant to a declaration, covenant, servitude, or law applicable to
20 such association, including but not limited to fees or charges payable for estoppel
21 letters or certificates issued by the association or its authorized agent.

22 (h) Any fee, charge, assessment, dues, contribution, or other amount imposed
23 by a declaration, covenant, servitude, or law encumbering a community, and payable
24 to a nonprofit or charitable organization for the purpose of supporting cultural,
25 educational, charitable, recreational, environmental, conservation, or other similar
26 activities benefitting the community that is subject to the declaration or covenant.

27 (i) Any fee, charge, assessment, dues, contribution, or other amount
28 pertaining to the purchase or transfer of a club membership relating to a corporeal
29 immovable owned by the member, including but not limited to any amount

1 determined by reference to the value, purchase price, or other consideration given for
2 the transfer of the corporeal immovable.

3 (2) "Private transfer fee obligation" means a covenant, servitude, building
4 restriction, or any other incorporeal immovable created by recording an instrument
5 against the title to the corporeal immovable, or any contractual agreement or
6 promise, whether or not recorded, that requires or purports to require the payment
7 of a private transfer fee to the declarant or other person specified in the declaration,
8 servitude or contractual agreement or promise, or to their successors or assigns, upon
9 a subsequent transfer of an interest in the corporeal immovable.

10 (3) "Transfer" means the sale, gift, conveyance, assignment, inheritance, or
11 other transfer of an ownership interest in a corporeal immovable located in this state.

12 §3133. Private transfer fee; prohibition

13 A private transfer fee obligation recorded or entered into in this state on or
14 after the effective date of this Act does not run with the title to a corporeal
15 immovable and is not binding on or enforceable at law or in equity against any
16 subsequent owner, buyer, mortgagee, or other party to a transfer of any interest in a
17 corporeal immovable as a covenant, servitude, building restriction, other incorporeal
18 immovable, contractual obligation, or otherwise. Any private transfer fee obligation
19 that is recorded or entered into in this state on or after the effective date of this Act
20 is void and unenforceable. The provisions of this Section do not mean that a private
21 transfer fee obligation recorded or entered into in this state before the effective date
22 of this Act is presumed valid and enforceable.

23 §3134. Violations; liability

24 Any natural or juridical person who records or enters into an agreement
25 imposing a private transfer fee obligation in their favor after the effective date of this
26 Act shall be liable for:

27 (1) Any and all damages resulting from the imposition of the transfer fee
28 obligation on the transfer of an interest in a corporeal immovable, including without
29 limitation the amount of any transfer fee paid by a party to the transfer.

1 (2) All attorney fees, expenses, and costs incurred by a party to the transfer
2 or mortgagee of the immovable to recover any transfer fee paid or in connection with
3 an action to quiet title. Where a mandatary acts on behalf of a principal to record or
4 secure a private transfer fee obligation, both the principal and the mandatary shall
5 be liable.

6 §3135. Disclosure

7 A seller of a corporeal immovable shall furnish to any purchaser a written
8 statement disclosing the existence of any private transfer fee obligation. This written
9 statement shall include a description of the private transfer fee obligation and include
10 a statement that private transfer fee obligations are subject to certain prohibitions
11 under this Chapter.

12 §3136. Existing transfer fee obligations; notice requirements

13 A. For a private transfer fee obligation imposed prior to the effective date of
14 this Act, the receiver of the fee shall record, prior to December 31, 2010, against the
15 corporeal immovable subject to the private transfer fee obligation, a separate
16 document in the conveyance records of the parish in which the corporeal immovable
17 is located that contains all of the following:

18 (1) A title labeling the document as "Notice of Private Transfer Fee
19 Obligation" in at least fourteen-point boldface type.

20 (2) The amount, if the fee is a flat amount, or the percentage of the sales
21 price constituting the cost of the transfer fee, or such other basis by which the
22 transfer fee is to be calculated.

23 (3) If the corporeal immovable includes a residential use, actual dollar-cost.

24 (4) The date or circumstances under which the private transfer fee obligation
25 expires, if any.

26 (5) The purpose for which the funds from the private transfer fee obligation
27 will be used.

28 (6) The name of the person or entity to which funds are to be paid and
29 specific contact information regarding where the funds are to be sent.

1 (7) The acknowledged signature of the payee.

2 (8) The legal description of the corporeal immovable burdened by the private
3 transfer fee obligation.

4 B. The person or entity to which the transfer fee is to be paid may file an
5 amendment to the notice of transfer fee containing new contract information, but
6 such amendment shall contain the recording information of the notice of transfer fee
7 which it amends and the legal description of the corporeal immovable burdened by
8 the private transfer fee obligation.

9 C. If the payee fails to comply fully with Subsection A of this Section, the
10 seller of any corporeal immovable burdened by the private transfer fee obligation
11 may proceed with the conveyance of any interest in the corporeal immovable to any
12 buyer and in so doing shall be deemed to have acted in good faith and shall not be
13 subject to any obligations under the private transfer fee obligation. In such event,
14 the corporeal immovable thereafter shall be conveyed free and clear of such transfer
15 fee and private transfer fee obligation.

16 D. If the payee fails to provide a written statement of the transfer fee payable
17 within thirty days of the date of a written request for the same sent to the address
18 shown in the notice of transfer fee, then the seller, on recording of the affidavit
19 required under Subsection E of this Section, may convey any interest in the corporeal
20 immovable to any buyer without payment of the transfer fee and shall not be subject
21 to any further obligations under the private transfer fee obligation. In such event, the
22 corporeal immovable shall be conveyed free and clear of the transfer fee and private
23 transfer fee obligation.

24 E. An affidavit stating the facts enumerated under Subsection A of this
25 Section shall be recorded in the conveyance records of the parish in which the
26 corporeal immovable is located prior to or simultaneously with a conveyance
27 pursuant to Subsection D of this Section of the corporeal immovable unburdened by
28 a private transfer fee obligation. An affidavit filed under this Subsection shall state
29 that the affiant has actual knowledge of, and is competent to testify to, the facts in

1 the affidavit and shall include the legal description of the corporeal immovable
2 burdened by the private transfer fee obligation, the name of the person or entity
3 appearing by the record to be the owner of such corporeal immovable at the time of
4 the signing of such affidavit, a reference to the instrument of record containing the
5 private transfer fee obligation, and an acknowledgment that the affiant is testifying
6 under penalty of perjury.

7 F. When recorded, an affidavit, as described in Subsection E of this Section,
8 shall constitute prima facie evidence that:

9 (1) A request for the written statement of the transfer fee payable in order to
10 obtain a release of the fee imposed by the private transfer fee obligation was sent to
11 the address shown in the notification.

12 (2) The person or entity listed on the notice of transfer fee failed to provide
13 the written statement of the transfer fee payable within thirty days of the date of the
14 notice sent to the address shown in the notification.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Arnold

HB No. 1133

Abstract: Prohibits private transfer fee obligations.

Proposed law provides for legislative intent.

Proposed law provides for definitions.

Proposed law provides that a "private transfer fee" means a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in a corporeal immovable, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the corporeal immovable, the purchase price, or other consideration given for the transfer.

Proposed law prohibits a private transfer fee obligation on or after the effective date of this Act.

Proposed law provides that any person who records or enters into an agreement imposing a private transfer fee obligation in their favor after the effective date of this legislation shall be liable for any and all damages resulting from the imposition of the transfer fee obligation on the transfer of an interest in a corporeal immovable and all attorney fees, expenses, and costs incurred by a party to the transfer or mortgagee of the immovable to recover any transfer fee paid or in connection with an action to quiet title.

Proposed law requires a seller of a corporeal immovable to furnish to any purchaser a written statement disclosing the existence of any private transfer fee obligation.

Proposed law provides that a private transfer fee obligation imposed prior to the effective date of this Act, the receiver of the fee shall record, prior to Dec. 31, 2010, against the corporeal immovable subject to the private transfer fee obligation, a separate document in the conveyance records of the parish in which the corporeal immovable is located that meets all of the following requirements:

- (1) The title of the document shall be "Notice of Private Transfer Fee Obligation" in at least 14-point boldface type.
- (2) The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the transfer fee, or such other basis by which the transfer fee is to be calculated.
- (3) If the corporeal immovable includes a residential use, actual dollar-cost.
- (4) The date or circumstances under which the private transfer fee obligation expires, if any.
- (5) The purpose for which the funds from the private transfer fee obligation will be used.
- (6) The name of the person or entity to which funds are to be paid and specific contact information regarding where the funds are to be sent.
- (7) The acknowledged signature of the payee.
- (8) The legal description of the corporeal immovable burdened by the private transfer fee obligation.

Proposed law allows for an amendment to the notice of transfer fee.

Proposed law allows in certain circumstances the seller of any corporeal immovable burdened by the private transfer fee obligation to proceed with the conveyance of any interest in the corporeal immovable to any buyer and not be subject to any obligations under the private transfer fee obligation if the payee fails to file the notice requirement.

Proposed law provides that an affidavit shall be recorded in the conveyance records of the parish in which the corporeal immovable is located prior to or simultaneously with the conveyance of the corporeal immovable unburdened by a private transfer fee obligation. The affidavit filed shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and include the legal description of the corporeal immovable, the name of the owner at the time of the signing of such affidavit, a reference to the instrument of record, and an acknowledgment that the affiant is testifying under penalty of perjury.

Proposed law provides that the affidavit constitutes prima facie evidence that a request for the written statement of the transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent and the person listed on the notice of transfer fee failed to provide the written statement of the transfer fee payable within 30 days of the date of the notice was sent.

(Adds R.S. 9:3131-3136)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Alphabetized the definition section.
2. Made a technical correction.